



CITY OF HAYWARD
AGENDA REPORT

AGENDA DATE 07/27/99

AGENDA ITEM 10

WORK SESSION ITEM _____

TO: Mayor and City Council

FROM: Director of Community and Economic Development

SUBJECT: Amendments to the Municipal Code, including the Zoning Ordinance, as it Pertains to Residential, Commercial and Industrial Districts

RECOMMENDATION:

The Planning Commission (5:0) and staff recommend that the City Council:

1. Approve the Negative Declaration; and
2. Approve the Municipal Code Amendments.

DISCUSSION:

The process for reviewing changes to the Zoning Ordinance included work sessions with the Planning Commission and City Council, as well as meetings with the Hayward Chamber of Commerce, former Neighborhood Task Force members, homeowner associations, and a livestock focus group. On July 15, 1999, the Planning Commission held a public hearing on the proposed amendments and were supportive of them. As part of their action in support of the amendments, Commissioners asked that the livestock ordinance clarify that the maximum number of livestock approved by use permit must be permitted over the life of use permits as long as some livestock remains on the property.

The following issues are those previously discussed and which are recommended to be amended in the Municipal Code.

1. Industrial District

- a. **Industrial Building Design Standards** – The recommended Industrial Building Design Standards (Exhibit C) were developed taking into consideration contributions received at work sessions, from the Chamber of Commerce Industrial Subcommittee, and from a developer of industrial properties. As recommended, implementation of the industrial design standards would be a part of the building permit process. However, when the guidelines are not met, the site plan review process would be applied and the matter referred to the Planning Commission for their independent judgment. The "site plan review" process would be applied to only those proposed buildings that do not meet the standards. (See Planning Commission minutes, attached as Exhibit B.)

Sherman Balch, a local industrialist, agreed that design control is important. However, he suggested that the review process of the design of industrial projects include a third party member, such as an ombudsman or a mediator, to resolve differences of opinion between the Planning Director and the designer or developer. He indicated that, although he has faith in the opinions of the current planning director and planning commission, he has reservations that future reviewers would be as reliable. (See letter of April 20, 1999, labeled Exhibit D.)

- b. **Truck Parking for Restaurants** – A recommended code amendment deletes the requirement for truck parking in conjunction with restaurants in the Industrial District.
- c. **Educational Facilities** - A recommended Zoning Ordinance amendment replaces the words “educational facilities” in the Industrial District with “industrial trade schools for individuals above the 12th grade” to more specifically only allow for specialized training of skilled labor which is supportive of the Industrial District.
- d. **Retail sales** of commodities produced or distributed on-site would be permitted with no permit, up to 10 percent of floor area (currently requires Administrative Use Permit).
- e. **Weekend retail sales** are proposed to be allowed year-round (currently only 4 times/year unless an administrative use permit is obtained.)
- f. **RV Storage and Public Storage** facilities are proposed to require a Conditional Use Permit (currently, RV Storage requires an administrative use permit as "outdoor storage", and Public Storage is principally permitted as "warehousing".)
- g. **Retail at regional marketing base level** would be permitted on a 4-acre parcel visible from 880 or 92 with a conditional use permit (currently is 8 acres.)
- h. **Nursery (plants)** would be permitted on a +2-acre parcel located on an arterial street with a conditional use permit (currently not allowed).

2. Central City Uses

- a. **Religious Facilities** – A recommended amendment to the Zoning Ordinance eliminates religious facilities from above the first floor in the Central City – Plaza (CC-P) sub-district, in addition to the first floor. Currently the Ordinance prohibits religious facilities from the first floor and allows them only above the first floor subject to approval of a conditional use permit. Religious facilities are “tax-exempt religious institutions” including their ancillary activities. Since religious facilities are currently prohibited on the ground floor of the CC-P, this would not change. The CC-P sub-district is limited to B Street between Foothill and Watkins and on Main Street from A to C Streets.

At the Planning Commission public hearing, Planning Commissioners pointed out that, while supportive of churches, prohibiting churches in the relatively small area of downtown is not unduly restrictive.

- b. **Thrift Stores** – A proposed amendment to the Zoning Ordinance prohibits thrift stores in the CC-C and CC-R sub-districts.
- c. **Consignment Stores** – Currently the Zoning Ordinance does not address consignment stores. A recommended amendment allows consignment stores as a Primary Use in the CC-C & CC-P sub-districts, and requires an administrative use permit in the CC-R sub-district. This arrangement would be consistent with other retail uses in the Central City sub-districts. A definition of consignment stores is included in the proposed text. It requires the business owner to sell only good quality merchandise (for example, clean, not damaged, stained, or frayed) accepted on consignment (not donated) and prohibits the consignment store proprietor from accepting and/or selling donated goods or second-hand merchandise. This would prevent the operator from acquiring used merchandise from other sources than consignment customers. Of course, the sale of new items in conjunction with the consignment goods is permitted.
- d. **Height Limit** – The height limit in the Core Area of the downtown is 55 feet, with a provision to increase the height if the footprint of the building is reduced. An amendment to the “Downtown Hayward Design Plan” limits the height of buildings in the CC-C sub-district around City Hall to 55 feet, with no provision to increase the height, in order to maintain City Hall as a focal point in the downtown.

3. Airport Terminal – Commercial Uses

Additional retail uses are proposed for the "Airport Terminal - Commercial" (AT-C) sub-district. Currently retailing is limited to within motels and restaurants, pumpkin patches and Christmas trees. This zone is generally located along the west side of Hesperian Boulevard. The stated purpose of the Air Terminal – Commercial District is to “provide for certain specified commercial and service uses that are compatible with airport activity, in addition to simultaneously serving the general population of the City.” The proposed amendment to the Zoning Ordinance allows retail uses in the AT-C sub-district only with approval of an administrative use permit, which allows review of the retail use on a case-by-case basis. In addition, they must be retail uses that have a regional or sub-regional marketing base in order to avoid small or disjointed strip commercial retail activity.

Since airport land is held by the City of Hayward, which has the power under its leasing authority to control the area designated to commercial users, the Planning Commission and staff do recommend including a requirement for a minimum site area. However, the recommendation limits commercial sites to no more than 8 acres under the AT-C zoning designation. Developers of larger projects would have to apply for Planned Development zoning, which would be reviewed by both the Planning Commission and the City Council so that greater control can be exercised over the type, intensity and mixture of uses.

Some comments received at the City Council and Planning Commission work sessions include a suggestion to limit retail uses to those that are airport-serving or related and that the intensity of retail uses and the aspect of safety around the airport should be a consideration. The suggestion to limit retail uses to “airport serving” is not consistent with the adopted purpose of the AT-C Sub-District, which is *“to provide for certain specified*

commercial and service uses that are compatible with airport activity, in addition to simultaneously serving the general population of the City.” The proposed change is to allow retail sales of “*goods with a regional or sub-regional marketing base, including but not limited to discount retail or warehouse retail, on land not to exceed 8 acres which is visible from Hayward Boulevard.*” Retail sales are subject to approval of an administrative use permit. Any approval action must include a finding that the use conforms to the purpose of the AT-C District described above.

At the Planning Commission public hearing, the motion to recommend approval of the amendments included a statement that there would be time between the Planning Commission hearing and City Council hearing to give consideration to safety factors as they relate to the proposal to expand the types of uses permitted in the AT-C sub-district. It has been determined that commercial uses are compatible with airports of the size of the Hayward Executive Airport when they are located in a lateral position to the airfield. The centerline of the nearest runway (28R) is approximately 1400 feet laterally to the southwest. The Federal Aviation Administration released this property for non-aviation use in 1966, subject to certain provisions. Those provisions include the right of passage for aircraft over the airspace and a determination that structures or objections not create any hazard or interfere with aircraft landing or take-off. Additionally, the FAA limits the height of buildings to no more than approximately 100 feet. The use permit process provides the opportunity for review of safety factors associated with retail projects. At the Planning Commission hearing, a member of the public, who had an interest in changes that allow retail uses in the Air Terminal – Commercial sub-district, indicated that the Negative Declaration prepared for the amendments was inadequate in that not all issues received adequate comment. The Negative Declaration determines that the ordinance amendments would not have a significant impact on the environment. It points out that, since retail development would require discretionary review, there would be further environmental review of projects on a case-by-case basis relative to safety, traffic, lighting, etc., as part of the use permit process.

4. Livestock and Animal Regulations

A task force, consisting primarily of individuals in the Hayward hill area with an interest in livestock, met to discuss regulations relating to the keeping of livestock in residential zones. They recommended allowing livestock in the Single-Family Residential (RS) District and the Residential Natural Preservation (RNP) District. Currently, large livestock are limited to the RNP District. The task force distinguished between large and medium livestock and recommended requiring lots of at least 20,000 square feet of land for large livestock and 10,000 square-foot lots for medium livestock. Some members of the task force indicated that standards should be established for keeping livestock, and standards relating to the amount of available land per animal are included in the proposed ordinance. Members of the task force who are livestock owners indicated that there should be no discretionary review, such as an administrative use permit.

As proposed, livestock, irrespective of size, would be permitted in the RS and RNP Districts with approval of an administrative use permit. However, in response to Council direction, as proposed, **minimum lot size for the keeping of both medium and large livestock has been retained at 20,000 square feet or more.** The Planning Commission asked that the Ordinance be made clear that once a use permit authorizes a maximum number of livestock, the property owner retains the right to maintain that number indefinitely as long as at least one livestock is present. However, if no livestock are present for a period of six months or longer, the use permit rights are void. As with other use permits or legal, non-conforming uses, the burden of proof that livestock has existed continuously on the property falls to the property owner. The proposed amendment for "Keeping of Livestock and Other Animals" is attached as Exhibit E.

5. Streamlining

a. **Changing Review Process from Conditional Use Permit to Administrative Use Permits for Some Uses**

The Planning Commission and staff recommend changing certain uses from conditional use permits to administrative use permits. A list of uses recommended to be changed from conditional use permit review to administrative use permit review is attached as Exhibit "F."

b. **Subdivision Ordinance - Final Maps** - An amendment of the Subdivision Ordinance would allow the City Engineer to approve final maps. A 1998 amendment to the Subdivision Map Act authorizes cities to adopt ordinances that allow the City Engineer to approve final maps. Currently that approval action lies with the City Council and is placed on their agendas as a consent item. In the past five years, staff has placed final maps on the agenda under "legislative business" rather than the consent calendar when the action held a broad interest (Twin Bridges) or when linked with other actions requiring actions outside the consent calendar, such as formation of a landscaping and lighting district. No final maps placed on consent or elsewhere on the agenda within that time frame have been denied. Final maps are "ministerial" actions, that is, they cannot be denied if they are consistent with the approved tentative map. Otherwise, the final map is denied or the developer must seek a modification of the tentative map. If Hayward adopts an ordinance that would allow the City Engineer to approve final maps, the following elements must be present:

- The City Council will be provided notice when a developer asks the City to approve a final map.
- The designated official must approve or deny the final map within 10 days after the first City Council meeting after the mailing of notice of the final map application to the City Council and interested parties.
- Notice is required to be mailed of any pending application for final map approval to interested parties.

- The ordinance must provide for periodic City Council review of the final map delegation authority.

6. Group Homes

The definition of a group home has been revised to include both licensed and unlicensed residential facilities. A small group home, serving six or fewer residents, is designated as a primary use in any district where a single-family residence is a primary use. State law does not allow the City to impose separation requirements on small group homes; however, the State itself imposes a 300-foot separation unless waived by the City.

A large group home, consisting of seven or more residents, will require approval of a conditional use permit, which is currently the case, and will be subject to a 500-foot separation requirement, unless a provision of the conditional use permit waives the separation requirement. During a recent hearing related to a large group home use permit, a Planning Commissioner raised a question relating to when a large group home may be considered institutional rather than residential. As proposed, this decision would be made on a case-by-case basis depending on the design of the structure involved in terms of its compatibility with surrounding structures and on the character and zoning of the neighborhood.

Additionally, a “reasonable accommodation” provision has been added to reflect the federal and State law mandate that zoning requirements for a use serving disabled or handicapped residents be waived or modified in appropriate instances.

7. Tattoo Parlors

As recommended, tattoo parlors are limited to the General Commercial zoning district. Currently, tattoo parlors are interpreted to be a primary retail use in all commercial districts. If this amendment were adopted, legally established tattoo parlors outside of the General Commercial District would become legal non-conforming uses. Staff is aware of only two legally established tattoo parlors that would become legal, nonconforming uses. They are on B Street in the downtown and on West Tennyson Road. Another tattoo parlor was observed in the Industrial District, and this matter has been turned over to the Community Preservation Division for resolution.

8. Small Education Facilities

A recommended Zoning Ordinance amendment allows small educational facilities (usually less than 2,000 square feet) for students between grades K-12 as a primary use in the CN, CN-R, CG, CO, CB districts and the CC-C sub-district. Currently a conditional use permit is required. Staff has recently received a number of inquiries and requests for small private educational/tutoring. These uses are usually seeking to locate in a retail or office type space. Because “educational facilities” require a conditional use permit, the applicants are often discouraged (for time and financial reasons) and do not pursue the process.

9. New Zone

A "Public Facilities" zoning district has been created to be consistent with the General Policies Plan and Map. Eventually, all public facilities, such as post offices, schools, CSUH, and City Hall can be identifiably zoned "PF" on the Zoning Map. A separate zone change action is required to change the zoning on these parcels.

10. Miscellaneous Amendments

- a. The "Nonconforming Uses" section has been rewritten to address both *nonconforming uses* and *nonconforming structures*.
- b. Drive-In Establishments standards have been updated to include several minor changes and a new section for standards of "Drive-Through Coffee/Esspresso Shops."
- c. The requirement that a transfer of ownership triggers a use permit in the "Alcoholic Beverage Outlet Regulations" has been eliminated in response to recent court decisions.
- d. Administrative use permits would be required for check cashing and similar uses in all commercial districts. They are currently primary uses.
- e. An amendment would permit childcare centers in the Commercial Office District. Child care is presently permitted in most zoning districts except the Industrial District.

11. New Issues Not Previously Discussed

- a. **Floor Area Ratio (FAR)** – Staff was asked to explore the concept of FAR in order to address concerns with residential bulk within subdivisions, particularly within subdivisions with small lots. The bulk of a structure refers to its size in terms of height and volume. The FAR concept has also been raised by a Hayward resident, who indicates that the FAR concept would be an effective tool for reducing bulk, for providing seniors with housing opportunities to "move down," and for providing a more attractive street pattern. (Please refer to Mr. John Kyle's letter of June 21, 1999, attached as Exhibit G.)

FAR is a measure of development intensity. FAR is the ratio of the floor area (square footage) of a building to the area (square footage) of its lot. To determine FAR, one divides the total floor area of the building by the total land area of the lot. Size, for purposes of FAR, is measured solely in terms of square footage. Perhaps it is easiest to visualize just what FAR means if one remembers that the figure always represents a ratio. Whatever the dimensions of a lot, its value is always 1; a building to be constructed on that lot is given a FAR value that is always a proportion of the land area of the lot. An FAR value of .25 means that a one-story building may occupy one-quarter of the square footage of the lot; an FAR of 1 means the building has the same square footage as the lot. A 2,500 square foot, one-story house that covers half a 5,000 square-foot lot has a FAR of .5. A two-story house that covers half a lot has a FAR of 1.

FAR is more commonly applied to commercial buildings or very dense housing. When applied to residential structures, it sometimes excludes accessory structures, porches, attics, basements, stairways, and utility rooms. FAR does not address the shape of the house, including roofline or side yard setbacks.

Currently, single-family dwellings can cover up to 40 percent of a lot. The Bay Area is experiencing increased property values and a scarcity of land available for housing. At the same time, the current development trend is to provide move-up, or at least large homes. As a result, pressure is exerted to maximize the square-footage of housing on small lots. The impact of new residential development is a change in scale from the prevailing small-scale single-story development in Hayward.

To provide a sense of bulk for previously approved housing, the following examples are offered.

- The recently approved single-family development with 4,000 square-foot lots on the former Sakai Nursery features relatively large homes (up to 2,966 square feet within a 40x40 structure), with up to five bedrooms and three full baths. The 2,966 square feet is calculated by including the square footage of the ground floor plus the square footage of the upper floor. Because the living room extends through the second-floor area, the square footage of the second floor is less than the first floor. The FAR for this dwelling (which is the sum of the square footage of the first and second floors divided by the square footage of the lot) is .74. The actual lot coverage is 40 percent.
- Homes at Twin Bridges are being constructed on (min.) 5,000 square-foot lots. One of the models is 2,482 square feet on a (min.) 5,000-square-foot lot, with a FAR of .5 and a lot coverage of 31 percent. The largest houses are on (min.) 6,000-square foot-lots. They are 3,355 square feet for a FAR of .56 and a lot coverage of 38 percent. Again, because the first floor ceilings of several of the rooms extend through the second floor, the bulk remains.

In either case, the bulk of the houses may appear to be excessive to some because, as viewed from the outside, the side yard setbacks are 5 feet for both the first and second stories. In the case of the development of the Sakai Nursery property, to impose an FAR of .45 would limit the maximum size of the house to 1,800 square feet instead of 2,966 square feet. The chart below reflects the square footage of houses that would be permitted under existing coverage requirement and using an FAR.

Lot Size	Sq. Ft. of House Permitted With Current Site Coverage Of 40%	Sq. Ft. of House Permitted With FAR .45	Sq. Ft. of House Permitted With FAR .55	Sq. Ft. of House Permitted With FAR .65	Sq. Ft. of House Permitted With FAR .70
4,000	3,000*	1,800	2,200	2,480	2,800
5,000	3,800*	2,250	2,750	3,250	3,500
5,500	4,200*	2,475	3,025	3,575	3,850

* This area excludes 200 square feet of stairwell space

The market demand at this time appears to be for the larger homes. When Stratford Village was developed on small lots, a variety of housing types were constructed during the first phase of development. However, their second phase featured all larger houses due to demands of the consumer. Larger homes result in more property taxes than smaller homes, and development fees, such as school impact taxes, are based on square footage. In Hayward, the number of children generated from new development has not increased with the size of the homes. By further restricting bulk on the second floor, either through the use of FAR or by requiring additional setbacks for second stories, the potential square-footage of the homes is reduced unless there can be intrusions into traditional front, rear or side yards.

One method of reducing bulk would be to amend the City's Design Guidelines to require second floor bulk to be less than the first floor to reduce the visual impacts created by high building walls, specifically at side elevations. Surrounding cities do not impose FARs for residential development and have been able to achieve more attractive rooflines through design guidelines. Union City addresses this issue within its design review process, and Fremont requires additional setbacks for second stories.

Another method that could be used as an incentive for reducing bulk, providing for a greater variety of design along the street, and providing for the needs of seniors is to require a certain percentage of a new housing development of more than ten lots to incorporate single-story housing. An incentive for single-story development would be to allow an increase in the amount of lot coverage permitted from 40 percent to up to as much as 60 percent. This technique is used in Union City.


To maximize design flexibility, staff and the Planning Commission recommend revising the Design Guidelines to encourage second floor bulk to be less than the first floor and by amending the Zoning Ordinance to provide incentives for single-story dwellings within new subdivisions. Developers can also use Planned Development districts for more creative and flexible designs, such as zero lot-line homes.

- b. **Tents and Similar Covers** - Tents and similar covers are not currently addressed in the Zoning Ordinance and are presently used in conjunction with some commercial activities, mainly car washes and automobile dealerships. Staff's observation is that tents used in conjunction car washes are for utilitarian purposes in that they shield vehicles and workers from the sun as vehicles are hand dried. When used at auto


dealerships, it appears that they are used as an attention-getting mechanism, much like a sign. In the latter instance, they are typically garish having bright colors, often with stripes and additional signage. A recommended amendment to the Zoning Ordinance would prohibit tents in conjunction with commercial uses other than during limited outdoor sale events. Permanent structures, such as decorative wood trellises, would be required for other commercial endeavors, such as at car washes.

- c. **New Auto Dealers as Primary Uses Along "Auto Row"** - As a streamlining measure, staff recommends amending the Zoning Ordinance to allow basically new car dealers as primary uses in the General Commercial Zoning District along "auto row," which is on Mission Boulevard between Fletcher and Harder Road. A stipulation is that all minimum development requirements for automobile dealers must be met, including elimination of loudspeaker systems and minimum landscaping, fencing, and building design requirements. These minimum development standards for new automobile dealers are attached as Exhibit H.


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Recommended by:


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Approved by:


Jesus Armas, City Manager

Attachments: Exhibit A	Negative Declaration and Initial Study
Exhibit B	Draft Planning Commission Minutes and Staff Report, dated July 15, 1999
Exhibit C	Industrial Building Design Standards
Exhibit D	Letter from Sherman Balch, dated April 20, 1999
Exhibit E	Proposed Livestock Regulations
Exhibit F	List of Uses Proposed to be Reclassified from CUP to AUP
Exhibit G	Letter from John Kyle re FAR, dated June 21, 1999
Exhibit H	Proposed Development Standards for New Automobile Dealers Along "Auto Row"
Exhibit I	Proposed Ordinance in Text Form

7.22.99

ATTACHMENTS

Due to the numerous attachments, they are not included herein. The report in its entirety, is on file at the Main Library, Weekes Library, City Clerk's Office and the Planning Division.